IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Abdul Quoom Gauri v. State of Raj. & Anr.

S.B.CIVIL WRIT PETITION NO.288/2001
under Article 226 of the Constitution of India.

Date of Order : 2nd May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul Sr.Advocate assisted by Mr.P.S.Chundawat, for the petitioner.
Mr. K.L.Thakur, Addl.Advocate General.
Mr. Tarun Joshi, for the respondent.

BY THE COURT :

By this writ petition a claim has been made by the petitioner for appointment to the post of Lower Division Clerk under Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 (hereinafter referred to as “the Rules of 1957”).

The factual matrix of the case, necessary to be noticed, is that the Rajasthan Public Service Commission against the vacancies pertaining to the year 1985-86 invited applications from the eligible persons desirous of taking examination prescribed for the post of Lower Division Clerks under the Rules of

1957. The petitioner applied and appeared in the competitive examination conducted by the commission for the purpose of appointment as Lower Division Clerk.

The selections made in pursuance of the competitive examination referred above were subject matter of a writ petition bearing SBCWP NO.3917/90 and 688 other connected petitions. This Court by judgment dated 24.11.1990 disposed of those writ petitions with the directions as under:-

> "I accordingly allow these writ petitions with the directions that the respondents would prepare a merit list of all the successful candidates having 37.5% or more and would consider the candidature of all those persons having 37.5% of marks or more for the purpose of giving appointments to the post of LDC in the various subordinate offices and departments under the Government of Rajasthan, Rajasthan Secretariat and the office of the Rajasthan Public Service Commission etc. and would ensure that no candidate having a percentage of 37.5% and more than that at the previous examination, which is the subject-matter of this litigation and have been deprived of the appointment merely on the basis of the preference given for the district and the preference which has been given for the purpose of district to serve is left without job. The above order will be applicable to all the petitioners and other successful

candidates of the examination in question having 37.5% marks or more irrespective of the fact whether their writ petitions are pending before this Court or the cases in which no writ petitions have been filed."

The judgment dated 24.11.1990 was taken to Division Bench in a Special Appeal and thereafter to Hon'ble Supreme Court by way of Special Leave to Appeal. Hon'ble Supreme Court decided Special Leave to Appeal in following terms:-

"Petition for Special Leave to Appeal (Civil) No.7114/98.

Sunita Gupta v. State of Rajasthan and another.

O R D E R:

It appears that the present election was held for the vacancies which were available upto 1985-86. The result of the selection was declared on 17th April 1989. When the matter was before the high Court, the Court directed the State Government to communicate to it the total number of vacancies available till 10th April 1991. Accordingly, the State Government intimated that there were 2,597 vacancies till April 1991. The High Court thereafter directed that those who were successful in the results declared on the 17th April 1989 should be accommodated in the said 2,597 vacancies.

It is the allegation of the writ petitioners in writ petition NO.623/93 that besides 2,597 vacancies, there are some more vacancies and they are sought to be filled in by regularizing the employees who were appointed on ad-hoc basis from 1.1.85 till 31.3.90. There is a controversy with regard to the actual number of such vacancies. It is not necessary for us to go into that controversy. Whatever the number of vacancies the State Government will add them to 2,597 admitted vacancies upto 10th April, 1991, and accommodate the successful candidates from the selection already held in the said additional vacancies as well. The direction given by the High Court in the impugned order is therefore modified as follows:-

Those candidates who have secured more marks than those who are already appointed either on the State or the District level will be accommodated in the remaining vacancies out of the above 2,597 plus the vacancies upto 10.4.91 which are sought to be filled in by regularizing the ad-hoc employees.

As far as the other successful candidates in the selection are concerned those who have secured more marks than the ones who are appointed will be given an opportunity to appear in the next selection by suitably relaxing their age for the purpose if they are over-aged.

The State Government to communicate to the State Public Service Commission the

> actual number of vacancies arising after 10th April 1991 within six weeks from today. The State Public Service Commission to start the selection process within two months after the communication of the vacancies by the State Government and complete the selection process within four months thereafter.
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> Sd/- Court Master"

The Rajasthan Public Service Commission, Ajmer in pursuant to the directions given by Hon'ble Supreme Court started the selection process under a Press Notification dated 18.9.1999 published in Dainik Navjyoti, Ajmer; Dainik Rashtradoot, Bikaner; Rajasthan Patrika, Jaipur; Pratahakaal, Udaipur; Jalte Deep, Jodhpur; Jannayak, Kota; Dainik Bhaskar, Ajmer; the Hindustan Times, New Delhi and Jansatta, New Delhi. According to press notification dated 18.9.1999 the desirous persons who qualified the Examination of 1986 were required to submit their application forms with affidavit upto 4.10.1999 personally or by post.

The contention of the petitioner is that at the time of publication of press notification dated 18.9.1999 he was serving Rajasthan Golden Transport Company in Andhra Pradesh, as such he failed to take note of the notification dated 18.9.1999. It is also averred by the petitioner that he came to know somewhere in the month of May 1999 through his sister Anisha Gauri about the fact that those persons who had

taken and passed the examination of Lower Division Clerk conducted by the commission were to be given appointment on the post of Lower Division Clerk in the Government of Rajasthan as per directions of Hon'ble Supreme Court. The petitioner accordingly came down to his place i.e. Nagaur and applied for a duplicate copy of mark sheet of Lower Division Clerk Combined Competitive Examination, 1986. He found that he secured 52% marks but till that time last date for submitting applications was already expired and, therefore, he failed to submit application in pursuance of press notification dated 18.9.1999. According to the petitioner he submitted a representation to the Chief Minister of the State and copies whereof were also sent to the concerned Minister of the Government of Rajasthan, Chairman of the Rajasthan Public Service Commission and also to His Excellency the Governor of Rajasthan. In spite of submission of representations by him no action was taken by the respondents and appointment was denied to him solely on the count that he failed to submit application in pursuance of press notification dated 18.9.1999.

The argument of the counsel for the petitioner is that he failed to submit an application in pursuance of the press notification before the date notified on account of his being away in Andhra Pradesh. Since appointments to the post of Lower

Division Clerks were not made when the petitioner made representation, there was no reason why his candidature be not considered as he too qualified competitive examination.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner secured 52% marks whereas the last appointment was given to a person who secured 55.50% marks, therefore, even if the candidature of the petitioner be taken into consideration, appointment could not be given to him. The respondents have also stated that there was no occasion to consider the candidature of the petitioner as he never submitted application in pursuance of press notification dated 18.9.1999. The petitioner also never approached to the commission and the grievance of the petitioner was first came into knowledge of the commission after receiving copy of the writ petition along with notices issued by this Court.

I have heard counsel for the parties.

The petitioner in quite unambiguous terms stated in the writ petition that he came to know about the decision of the commission in the month of May, 1999 through his sister Anisha Gauri by telephonic message and then he came to Nagaur and obtained a copy of duplicate mark sheet from the Rajasthan Public

Service Commission. Thereafter he claim for appointment. It is pertinent to note that the press note was issued by the commission on 18.9.1999. The petitioner how came to know about the decision of the commission in the month of May, 1999 is totally in-understandable. It appears that the petitioner on being failed to submit application in pursuance to press note dated 18.9.1999 concocted a story with regard to knowledge of decision of the commission to start selection proceedings in pursuance of directions given by Hon'ble Supreme Court.

The averments made in the writ petition are worth to be quoted, a reading of which unfolds the fact that the petitioner concocted the entire story just to give a credil to the present writ petition:-

> "5.That somewhere in May 1998 the petitioner's sister Anisha Gauri rang up the petitioner telling him that those who have taken the examination of L.D.C. Conducted by RPSC, Ajmer and had passed therein are to be given appointment on the post of L.D.C. In the Government of Rajasthan as per the directions of the Hon'ble Supreme Court and he should come any try to get appointment on the post of L.D.C. The petitioner, therefore, came down to his home place at Nagaur and applied for a copy of the mark-sheet of L.D.C. Combined Competitive Examination, 1986 conducted by Rajasthan Public Service Commission. Duplicate copy of Mark-sheet which has been supplied to the

petitioner is being annexed hereto as Annex.1. The petitioner secured 104 marks out of 200 marks. Thus, the petitioner secured about 52% marks.

6.That soon after the receipt of a copy of the aforesaid mark-sheet, the petitioner chose to address a letter to the Chief Minister of Rajasthan, a copy of which was also sent to the Chairman, RPSC, Government of Rajasthan, Ajmer, Governor of Rajasthan, Jaipur and Shri B.D.Calla, a Minister in the Government of Rajasthan. The petitioner places on record a copy of this letter along with postal receipts evidencing proof of having dispatched these letters. These are marked as Annex.2 and 2A respectively. The petitioner has not heard anything in the matter so far.

7.That the petitioner also called upon Shri B.D.Calla, a Minister in the Government of Rajasthan on 3.7.2000 at Jaipur. The petitioner produces herewith a copy of Entry Pass dated 3.7.2000 issued by the Rajasthan Secretariat, Jaipur granting permission to meet Shri B.D.Calla. This is marked as Annex.3. The petitioner meet Shri B.D.Calla and he was kind enough to assure him that he will look into the matter."

I failed to understand the reason which prevented the petitioner from submitting an application in pursuance of press notification dated 18.9.1999 though he was knowing the decision of the commission in the month of May, 1999 itself. It is

also pertinent to note that the petitioner never submitted any representation or notice for demand of justice to the Rajasthan Public Service Commission. The petitioner has placed on record a representation Anx.2 dated NIL which was said to be submitted by him to the Chief Minister of the Government of Rajasthan. Submission of representation to the Chief Minister of the Government of Rajasthan is totally unwarranted in present set of circumstances. No notice of such representation could be taken being vague and submitted to the authorities totally unconcerned.

Be that as it may, it is the position admitted that the petitioner never submitted any application in pursuance to the press notification dated 18.9.1999 though the same was published in all local, State level and National level news papers, as such there was no occasion for the respondents to consider the candidature of the petitioner for giving him appointment. I do not find any illegality in the act of the respondents by not giving appointment to the petitioner as he never claimed for the same. The process of selection is a definite administrative process and no uncertainty is supposed to be there. The respondent commission proceeded in a definite manner with view to implement the directions given by Hon'ble Supreme Court in a just and fair manner and whatever is suggested by the petitioner in the writ petition is nothing but a total irresponsible and

negligent attitude on his part. A process of selection cannot be put at uncertainty due to inaction on part of the person desirous for employment. The direction sought by the petitioner if allowed shall be nothing but an hurdle in smooth and fair process of appointment. The petitioner if permitted to be considered for appointment as claimed by him then it will certainly frustrate the procedure started by the commission in pursuant to the directions given by the Court. The petitioner himself was not vigilant to protect his rights and to avail the fruits thereof, as such he cannot make complaint for his own wrong.

In view of it the writ petition is meritless. The writ petition is accordingly dismissed.

No order as to cots.

(GOVIND MATHUR),J.

kkm/ps.